

based on DoD obligations recorded to the date the equipment is offered for sale. Production costs shall include costs incurred by the Department of Defense. Production costs for the foreign military sales program and known direct commercial sales production are excluded.

Model. A basic alpha-numeric designation in a weapon system series (e.g., a ship hull series, an equipment or system series, an airframe series, or a vehicle series). For example, the AN/TPQ-36(V)2 and the (AN/TPQ-36(V)10 are different models in the same radar system series.

Nonrecurring production costs. Those one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run. Those NCs include DoD expenditures for preproduction engineering; special tooling; special test equipment; production engineering; product improvement; destructive testing; and pilot model production, testing, and evaluation. That includes costs of any engineering change proposals initiated before the date of calculations of the NC recoupment charge. Nonrecurring production costs do not include DoD expenditures for machine tools, capital equipment, or facilities for which contractor rental payments are made or waived in accordance with the Defense Federal Acquisition Regulation Supplement.¹

Nonrecurring research, development, test and evaluation costs. Those costs funded by a research, development, test, and evaluation appropriation to develop or improve the product or technology under consideration either through contract or in-house DoD effort. This includes costs of any engineering change proposal started before the date of calculation of the NC recoupment charges as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either procurement or operation and maintenance appropriations.

Pro rata recovery of NCs. Equal distribution (proration) of a pool of NCs to a specific number of units that benefit from the investment so that a DoD Component shall collect from a customer a fair (pro rata) share of the investment in the product being sold. The production quantity base used to determine the pro rata calculation of major defense equipment includes total production.

Significant change in NCs recoupment charge. (1) A significant change in an NC recoupment charge occurs when:

(i) A new calculation shows a change of 30 percent of the current system NC charge.

(ii) The NC unit charge increases or decreases by 50,000 dollars or more, or

(iii) Where the potential for a 5 million dollar change in recoupment exists.

(2) The total collections may be estimated based on the projected sales quantities. A significant change occurs when potential collections increase or decrease by 5 million dollars.

Special research, development, test, and evaluation and nonrecurring production costs. Costs incurred under a foreign military sale at the request of, or for the benefit of, a foreign customer to develop a special feature or unique or joint requirement. Those costs must be paid by the customer as they are incurred.

§ 165.4 Policy.

It is DoD policy that:

(a) The NC recoupment charge shall be imposed for sales of major defense equipment only as required by an Act of Congress. The USD(P), through the Defense Security Cooperation Agency, may grant a waiver to recoupment charges in accordance with in accordance with this part and DoD Directive 5105.65.”²

(b) The NC charges shall be based on the amount of the Department of Defense nonrecurring investment in an item.

§ 165.5 Responsibilities.

(a) Under Secretary of Defense (Comptroller)/Chief Financial Officer

¹Available at <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>.

²Available at <http://www.dtic.mil/whs/directives/corres/pdf/510565p.pdf>.

Office of the Secretary of Defense

§ 165.6

(USD(C)/CFO)) shall provide necessary financial management guidance to the Department of Defense regarding the recoupment of NC.

(b) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall take appropriate action to ensure the Defense Federal Acquisition Regulation Supplement remains in accordance with this part.

(c) The USD(P) shall:

(1) Monitor the application of this part.

(2) Review and approve NC recoupment charges.

(3) Review and approve NC recoupment charge waiver requests received from foreign countries and international organizations for foreign military sales.

(4) Oversee publication of a listing of items developed for or by the Department of Defense to which NC recoupment charges are applicable.

(5) Use the guidance in §165.7 of this part to review NC waiver requests.

(d) The Secretaries of the Military Departments and the Directors of the Defense Agencies shall:

(1) Determine the DoD nonrecurring investment in items developed for or by the Department of Defense and perform required pro rata calculations in accordance with this part and financial management guidance from USD(C)/CFO when a military equipment asset type is considered a candidate for sale.

(2) Validate and provide recommended charges to the USD(P). Retain supporting documentation until the item has been eliminated from the NC recoupment charge listing.

(3) Review approved NC recoupment charges on a biennial basis to determine if there has been a change in factors or assumptions used to compute a NC recoupment charge and, if there is a significant change in a NC recoupment charge, recommend the change to USD(P) for review, approval, and publication in DSCA 5105.38-M, "Security Assistance Management Manual (SAMM)."³

(4) Collect charges on foreign military sales, in accordance with DoD 7000.14-R.⁴

(5) Deposit collections to accounts as prescribed by the USD(C)/CFO.

(6) Request guidance from the USD(P), within 90 days after determining that an issue concerning an NC recoupment charge cannot be resolved.

§ 165.6 Procedures.

(a) The NC recoupment charge to be reimbursed shall be a pro rata recovery of NCs for the applicable major defense equipment (MDE). Recovery of NC recoupment charges shall cease upon the recovery of total DoD nonrecurring investment costs. Such charges shall be based on a cost pool as defined in §165.3. For an MDE system that includes more than one component, a "building block" approach (i.e., the sum of NC recoupment charges for individual components) shall be used to determine the NC recoupment charge for the sale of the entire system.

(b) The NC recoupment charge shall not apply when a waiver has been approved by USD(P), in accordance with §165.7, or when sales are financed with USG funds made available on a non-repayable basis. Approved revised NC recoupment charges shall not be applied retroactively to accepted foreign military sales agreements.

(c) When MDE is sold at a reduced price due to age or condition, the equipment's NC recoupment charge shall be reduced by the same percentage reduction.

(d) The full amount of costs for "special" research, development, test, and evaluation and nonrecurring production costs incurred for the benefit of particular customers shall be paid by those customers. However, when a subsequent purchaser requests the same specialized features that resulted from the added "special" research, development, test, and evaluation and nonrecurring production costs, a pro rata share of those costs may be paid by the subsequent purchaser and transferred to the original customer if those special NCs exceed 50 million dollars. The

³ Available at <http://www.dsca.osd.mil/samm/>.

⁴ Available at <http://www.defenselink.mil/comptroller/fmr/>.